

# Consent Application – Its Purport, Constitution, Purpose and Usefulness for Abatement of Water Pollution

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The consent application from dischargers has to be dealt with in the whole context of the legislation for the abatement and control of water pollution in our country. The Government of India has after due and mature consideration decided to give top priority to water pollution control in the country and has accordingly made suitable institutional arrangements for the protection of our precious water resources from pollution. An Act called Water (Prevention and Control of Pollution) Act was enacted in 1974 which came into force with effect from March 1974.

In the preamble to the legislation it has been stated that this Act is “to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.” Thus it may be seen the purpose of the Act itself has also been clearly enunciated. Further the agencies for carrying out the purpose aforesaid have been established under Sections 3 and 4 of the Act.

Now what are the powers and functions which are conferred and assigned to the Central Board and State Boards which are the agencies created under the Act? Sections 16 and 17 of the Act which set down the powers and functions of the Central and State Boards may be taken as the broad framework under which the Boards may function. Thus the legislation establishes not only proper agencies but also empowers them as the operational units to implement Government policy. Sections 16 and 17 may be read as the guidelines and directions for these agencies in which the agencies have to work. These agencies may set priorities in conformity with the terms of

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reference and objectives of the Act. The legislation has not only provided for the appropriate pollution control agencies but also has enshrined in it the means to deal with conflicts which may come up among the various groups involved in the programme. Attention is drawn to sections 16 (i) (b) and 18 of the Act.

Since the beginning of our country's independence there has been a shift in the emphasis of the control of water quality. We have been concentrating on the prevention and effective control of water-borne diseases such as Cholera, Typhoid, Guinea worm and the like. We can confidently say that simple techniques of filtration and chlorination have been adequate in this regard and the sewage pollution could be satisfactorily controlled with these measures. Even now, of course, we cannot divert from the fact that we have to be ever vigilant and monitor our sanitary systems for pathogenic organisms. However, after a measure of success with the control of pathogens, we have come to look upon successively the measures for control of oxygen consuming wastes. This is the phase of secondary treatments in our sewage plants which are being designed to reduce the BOD load placed on the receiving waters. Unfortunately there are far too many urban centres, not to speak of large rural communities, that have no adequate collection, much less safe disposal methods for their domestic wastes.

With the advent of rapid industrialisation water pollution problem has become more complex. We have to control the release of nutrients to slow the eutrophication of our impounded water resources, industry has to be prevented from discharging wastes containing dangerous substances such as mercury, arsenic, cadmium, barium, acid-mine wastes, pesticides, heat etc. The cost of necessary programmes for the control and preventive measures is high no doubt, but it can never be said to be unreasonable in view of the hazard posed by them if allowed to pollute our precious and limited resource that is WATER. The cause of pollution may be said to be the discharge of foreign matters like domestic sewage, industrial effluents of different types — such as organic wastes produced by sugar cane processing plants, acids, alkalis, oils, tar, inorganic and organic chemicals, and toxic substances such as cyanide and sulphides. Further, synthetic detergents and radio active effluents, agricultural chemicals like weed-killers and pesticides, oil and oil products and waste heat carrying effluents may be included as objectionable matter in the water resource. Though not a health hazard, silt out of natural erosion of soil dumped directly into the water may also be included as a possible pollutant.

Now, turning to another essential aspect, the meaning of the concept of water pollution is important since it is generally the starting point for the enactment of any water pollution control legislation and other regulations,

orders and decrees to implement the legislation. It is also the focal point for those who must comply with the legal provisions and for the administrative and judicial authorities who must enforce them. Nevertheless, a possible argument in favour of a no-definition of water pollution approach is the difficulty in defining such a concept, as evidenced by the lack of uniformity among definitions adopted by various national legislative systems and among those advanced by international conferences and pollutionists. Perhaps an inadequate definition may prove to be of greater harm than not having one at all.

In Switzerland there is no definition but it is laid down that

measures necessary to control the pollution or other deterioration of surface water and ground water shall be taken so that the health of man and of animals is protected, that ground water and spring water is fit to drink, that surface water may be treated to render it fit for consumption and for industrial use, that water is usable for bathing purposes, that fish may live in it, that construction works are not harmed, and that the country side is not disfigured.

This, perhaps, may be termed as indirect definition of water pollution.

Sometimes water pollution is defined in terms of the harmful effects which such pollution has on the quality of water affected by it. The French Law envisages control of water pollution and the provisions of law apply to "discharges, drainage, wastes, the storage, whether directly or indirectly, of materials of any kind, and more generally, to anything liable to cause or increase the deterioration in quality of waters, whether surface water, ground water or maritime territorial waters, by changing their physical, chemical, biological or bacteriological characteristics".

Alternatively, pollution may be defined in terms of the resulting interference with the use, for various purposes, of the water affected. Such interference is implied in Finnish Law of 1961 whose definition of pollution is :

The discharge of dirt, waste, liquid, gas, bark, or other materials into water courses in such a way that directly or indirectly, harmful blocking up of the water course, a harmful alteration in the water quality, obvious harm to fish, an appreciable decrease in the pleasantness of the surroundings, a danger to health, or any other injury to private or public interests, is caused.

Perhaps, the 1950 Belgian Law may be said to be more explicit in that the law makes it an offence to pollute waters by throwing into, or depositing in them any object or materials, or by allowing liquids to flow into them, if any of these actions :

is capable of harming the water by making them either malodorous or putrescible, or harmful to the natural, or cultivated or reared aquatic fauna and flora, or rendering them unsuitable for the water or animals, the irrigation of the land or for industrial or domestic use ..

Section 2 of the regulations issued in 1961 in the USSR, provides that "surface waters" shall be considered polluted "if their composition or characteristics have been changed as a direct or indirect effect of industrial activity and the turning conditions of the population, and they have therefore become useless for one or more forms of water use". Section 4 also provides by implication that the water becomes useless for some particular use if they fail to conform to the corresponding standards; these standards constitute, in fact, an integral part of the Regulations. The procedure to be adopted when a water course is used simultaneously for a number of different purposes is explicitly laid down saying that the "determination of the conditions of discharge of effluents must be based on the most stringent requirements of the various corresponding standards for the quality (purity) of surface waters". They also contain provisions governing the composition and characteristics of water, rather than of effluents, together with the maximum permissible concentrations of more than 70 harmful substances, grouped according to what is called the "Limiting criterion of harmfulness".

In Czechoslovakia—The Central Water Resources Board issued in 1957 directions for division of streams into 5 categories depending on their quality, as indicated by BOD, DO present the pH value, the average number of coliform bacteria and saprobity system. Maximum permissible concentration of certain poisonous substances are also listed in the directions. They differ from the USSR regulations in that the substances are fewer in number and concept of the limiting criterion of harmfulness is not used.

Let us examine the definition of pollution in Indian law. The Act defines "Pollution" to mean

Such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewerage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

Could we or could we not call this an adequate definition?

There are varieties of interests that are affected by water pollution. Hence, there is bound to be differences in the working of actual agencies dealing with the control of water pollution. It only behoves that there is proper and careful coordination of the activities in the various phases and the controlling agencies. In Belgium for example, the Effluent Treatment Bureau was with the Ministry of Works but was later transferred to Ministry of Public Health. In addition an Interministerial Committee was set up with a view to coordinate and liaison with and between various ministries concerned. In Czechoslovakia, legislative measures were first initiated by the Ministry of Technology, subsequently by Ministry of Health, and then jointly with Ministry of Chemical Industry, Ministry of Power and Water Resources and the Ministry of Agriculture, Forestry and Water Resources.

In France, it is by far the most complex. No less than seven Ministries and nine important administrative bodies are concerned with problems of water resources. However, a Water Committee attached to the General Planning Commission together with the Standing Interministerial Committee, is responsible for co-ordination of all activities concerning water pollution at the Centre; Water coordination areas, and technical and consultation committees are responsible for this duty at the regional level. In Newzealand the main responsibility is with Marine Department. The Pollution Advisory Committee consisting of representatives of Marine, Agricultural, Health, Works, Industrial and Scientific Research Departments, Local authorities and Industry etc., is entrusted with the duty "to inquire into and make reports and recommendation to Minister (of Marine) on such ways...of coordinating the functions of persons or bodies charged with the duty or preventing or reducing the pollution of waters as...appear practicable...". It is interesting to note that in Switzerland, where a Federal form of Government exists, the Department of Interior at the Central level is responsible for the enforcement of law on water pollution. A Technical Water Protection Service, attached to this department is there to collaborate with various federal departments concerned with water pollution such as Public Health Service, Water Service, Inspectorate of Fisheries, Inspectorate of Public Works, Land Improvement Bureau, Federal Commission for Protection of Nation and Country Side. At the cantonal level the administrative system is quite different.

Advisability of establishment of special authorities responsible for each complex river system is hardly a matter for debate or dispute and this has been justified by the adoption of such system in leading countries where water pollution legislation has been initiated long long ago before the rush of legislations in the 60s and 70s. To mention only a few, U.K. with its River Boards Act of 1948 and Water Resources Act, 1963, Swedish Water Tribunals

under 1918 law, as also France with its law of 1964 all toe this line.

It is an accepted fact that "good water quality is not maintained in the absence of legislative control". The reason is that there are far too many pious hopes that have foundered on failure of individuals, cities and industries to cooperate and act collectively. Generally we are beset by disagreements as to the standard of quality to be attained and/or maintained. May be we could agree more if we had sufficient scientific information on the efforts of contaminants on all phases of the food chain of aquatic communities. There is yet another facet on which agreement cannot be reached. This is in respect of the necessity for an aquatic community to be maintained at all. Why can we use the aquatic system as a vehicle for disposal of domestic and industrial wastes.

In our parlance we have always been talking about "Standards" and may be now and again we use the word "Criteria". Is there any difference or can we define these words more explicitly? In some advanced countries the following definitions have been adopted :

1. Standard : A plan that is established by governmental authority as a programme for water pollution Prevention and Control.
2. Criteria : A scientific requirement on which a decision or judgement may be based concerning the suitability of water quality to support a designated use.

After defining these terms, we have to lay down water quality standards and criteria for receiving waters. These will enable us to fix the level of treatment necessary, to establish a criteria for the stream which can be enforced to get an acceptable quality commensurate with the beneficial use to which the receiving waters are put and to ensure that unpolluted water resource is available to us and for our future programmes. The standard of quality of course, have to be set out clearly and explicitly if it were to stand the test of enforcement in a court of law. So, the documenting of Consent Application form which we have to use in an event of court action will also have to be explicit and clear.

Under sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 provision has been made for the compulsory application of both existing and proposed industries, local authorities and others who discharge effluents for obtaining consent of the relevant authorities for continuing and/or bringing into any new effluent discharges. This provision is time bound both for application and consideration and disposal of such application.

What is the consent application form which is approved by the Government of India for making consent application? The form gives various general particulars which are required to be submitted by an applicant/discharger who makes an application to the Board for obtaining consent for the discharge of liquid wastes from the premises which he is using as a manufacturing or other establishment. For instance, he has to supply general information pertaining to industries as well as local bodies, raw materials which are being used in the process as well as the oil and grease used as lubricants, materials used as fuel e.g., oil, grease and others, products and by-products manufactured, the possible intermediate products and the quantity of water consumed in litres. He has to mention the hourly maximum and daily maximum quantity of effluents arising from the premises for which the application has been made. The effluents are further divided into 4 other categories such as domestic, industrial, agriculture and other uses. General information in regard to the various types of effluents and disposal methods has also to be supplied. Quantitative disposal of effluents are asked to be given and also the mode of disposal such as i) stream or river on lands for irrigation ii) pm; and for percolation iii) lake/pond iv) tidal waters v) estuarine waters vi) open sea. Information also solicited regarding equalising and holding lagoons and also the land available in case of pumping of effluents on land has to be considered.

The most important item among these informations is that 39 parameters are detailed out and the applicant is asked to get his effluents analysed and give details of the actual number and the exact quantity of the various and expected pollutants as shown by parameters which have been listed out. There could be as much as 70 items under toxic elements. It has now become apparent that this requirement will involve quite a bit of trials and tribulations for the applicant as he has not only got to collect composite samples as required but also have them tested elaborately at perhaps a considerable cost.

In order to deal with another important aspect of our legislation, the verbatim reproduction of certain relevant paras of the "WATER POLLUTION REGULATIONS OF ILLINOIS" may be relevant.

#### **Applications—contents**

- (a) All applications for any permit required under this Part shall contain, where appropriate, the following information and documents :
  - (1) a complete description of the volume and nature of the waste water influent and effluent to be transported, treated or discharged, including a statement as to the presence or absence of all contaminants

for which effluent or water quality standards are set by this Chapter; and

- (2) a description of the present condition of the receiving body of water and the effect of the wastewater on such receiving body of water; and
  - (3) a statement as to any projected changes in the volume or nature of the wastewater which the applicant desires to have included within the terms of the Permit; and
  - (4) a description of the geographic location of the facility or source, and its interrelation with any existing or proposed treatment works, sewer, or waste water source which will transport, treat, or discharge the same wastewater; and
  - (5) plans and specifications, prepared by a registered professional engineer, fully describing the design, nature, functions and interrelationship of each individual component of the facility or source; and
  - (6) a statement identifying and justifying any departure from current design criteria promulgated by the Agency.
- (b) The agency may adopt procedures requiring such additional information as is necessary to determine whether the treatment works, sewer, or wastewater source will meet the requirements of the Act and this Chapter.
- (c) The Agency may prescribe the form in which all information required under this Rule shall be submitted.

**Applications—signature and authorizations**

- (a) All permit applications shall be signed by the owner of the treatment works, sewer, or wastewater source or the owner's duly authorized agent, and shall be accompanied by evidence of authority to sign the application.
- (b) Permit applications for sewer construction or modification shall be accompanied by signed statements from the owners of all intermediate receiving sewers and the receiving treatment works certifying that their facilities have adequate capacity to transport and/or treat the wastewater that will be added through the proposed sewer without violating any provisions of the Act and this Chapter.



**Applications—registered or certified mail**

All permit applications shall be mailed or delivered to the appropriate address designated by the Agency. Any application or revised application sent by mail shall be sent by registered or certified mail, return receipt requested.

Applications which are hand-delivered shall be delivered to and receipted for by any authorized person employed in the Permit Section of the Agency's Division of Water Pollution Control.

**Applications—time to apply**

Any person required to have a Permit must file an application with the Agency at least 90 days before the date on which the Permit is required.

**Applications—filing and final action by agency**

- (a) An application for permit shall not be deemed to be filed until the Agency has received, at the designated address, all information, documents, and authorizations in the form and with the content required by Rules 911-913 and related Agency procedures. Provided, however, that if the Agency fails to notify the applicant within 30 days after the filing of a purported application that the application is incomplete and of the reason the Agency deems it incomplete, the application shall be deemed to have been filed as of the date of such purported filing. The applicant may treat the Agency's notification that an application is incomplete as a denial of the application for purposes of review.
- (b) If the Agency fails to take final action, by granting or denying the Permit as requested or with conditions, within 90 days from the filing of the application, the applicant may deem the Permit granted for a one-year period commencing on the 91st day after the application was filed.
- (c) Any applicant for a Permit may waive the requirement that the Agency must take final action within 90 days from the filing of the application.
- (d) The Agency shall send all notices of final action by registered or certified mail return receipt requested.
- (e) The Agency shall be deemed to have taken final action on the date that the notice is mailed.

**Standards for issuance**

The Agency shall not grant any Permit required by this Part, except an Experimental Permit under Rule 907, unless the applicant submits adequate proof that the treatment works, sewer, or wastewater source;

- (a) will be constructed, modified, or operated so as not to cause a violation of the Act or of this Chapter, or has been granted a variance under Title IX of the Act; and
- (b) either conforms to the design criteria promulgated by the Agency under Rule 931, or is based on such other criteria which the applicant proves will produce consistently satisfactory results; and
- (c) conforms to all conditions contained in the Construction Permit, where applicable; and
- (d) if subject to a future compliance date, the applicant has an approved Project Completion Schedule in accordance with the provisions of Rule 1002.

**Duration of permits**

- (a) Construction Permits : Construction Permits for sewers and wastewater sources shall require that construction be completed within two years. Construction Permits for treatment works shall require that construction be completed within three years. In situations where the magnitude and complexity of the project require it, the Agency may issue a Construction Permit requiring completion within a period not to exceed five years.
- (b) Operating Permits : All Operating Permits other than those issued under Rule 902 for newly constructed sewers shall have a duration not to exceed five years. The Agency may issue Operating Permits having a duration as short as one year in order to facilitate basin planning, to coordinate Operating Permits within future compliance deadlines and to maintain intensive control over new or experimental processes.

**Conditions**

In addition to specific conditions authorized under this Part the Agency may impose such conditions in any Permit issued pursuant to this Part as may be necessary to accomplish the purposes of the

Act on this Chapter provided such conditions are not inconsistent with this Chapter”.

This shows that the contents of the application itself has been dealt with at length and in great detail. So also, even about the signatures and authorisation and time to apply etc., together with filing and final action by the agency, it is stated that “Application for abatement shall not be deemed to be filed until the agency has received, at the designated address, all information, documents and authorizations in the form and with the content required by rules 911-913 and related agency procedures”.

Compared with this, our law merely states that unless given or refused earlier consent shall be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board. This has given room for endless understandings and misunderstandings. Some of the legal advisers say that it would be incorrect not to deal with the consent applications even if received in a most incomplete and irregular manner. Though consent may be refused so that they may again apply with full particulars and full details. Naturally this will give room for a lot of dilatory tactics and there is no means of preventing such tactics except perhaps to go through the long drawn procedure of filing a court case.

If only the ruling under this is very clear like my quote above, it would have been easy for us to deem that the application has not been received with full and detailed informations and that we need not deem it to be filed at all and the time bound action will begin only from the date of such filing of the application complete in all respects. I invite reference to item (b) quoted by me wherein it has been stated that if the agency i.e., the Boards in our case fail to take final action for granting and denying the consent within the stipulated time, the applicant has been authorized to take it that the permit would be deemed to have been granted for a one year period commencing on the 91st day after the application was filed. It would be better for us if we could discuss these in detail and see whether such a provision cannot be made either in our Act or our Regulations.

How abatement of water pollution control can be achieved is a question of which there can be no readymade answer. What then is the basis for recommending decisions that are pre-requisites to a sound programme and then to apply knowledge compiled by experts in particular areas with assurance. A thorough knowledge of the limitations will ensure employing adequate measures in effectively abating and preventing pollution. There are no agreed policy or mechanics. I am afraid that solutions to the water

**pollution control problems are not being selected on its important basis but monies granted as inducement of ideas of any kind on any facet of individual interests.**

**Further, the industrial pollution problem cannot be dealt with in isolation. Its very definition is dependent on decisions in other facets of water quality control. The cost of industrial water pollution abatement may form a part and parcel of the cost for doing business which will bear directly on the industrial location and operation. Hence each appraisal has to be based on politico-socio-economic considerations.**